

# TORTA Research S.r.l.

Via Viotti, 9 - 10121 Torino - Italy - Tel. 011 5611320

Via Emilia Ponente, 34 - 40133 Bologna - Italy - Tel. 051 389122

## EUROPEAN PATENT OFFICE

D-80298 München

Germany

EPO - Munich  
37

13. Sep. 2005

Bologna, September 6, 2005

Re: Remarks concerning the patentability of European patent application **03758050.3** according to Art. 115 EPC

European patent application **03758050.3** (corresponding to **WO2003EP11774**) was filed on **24-10-2003** in the name of **Focke & Co. (GmbH & Co. KG)**, was published with publication No. **EP 1558503 A1 (WO 2004041677 A1)** and claims a German priority (**DE20021051743**) of **05-11-2002**.

The present remarks are mainly based on the following documents:

Document 1 (D1)	ITBO01O000022	Not cited in the EPO Search Report
Document 2 (D2)	US5833060	Not cited in the EPO Search Report
Document 3 (D3)	US4753383	Not cited in the EPO Search Report
Document 4 (D4)	US4753384	Not cited in the EPO Search Report
Document 5 (D5)	US2003047471	Cited in the EPO Search Report
Document 6 (D6)	US5255842	Not cited in the EPO Search Report
Document 7 (D7)	DE1017013	Not cited in the EPO Search Report
Document 8 (D8)	GB819206	Not cited in the EPO Search Report
Document 9 (D9)	DE4429670	Not cited in the EPO Search Report

*Previously  
Cited*  
*Previously  
Cited*

*Previously  
Cited*

We question the patentability of the application in object under Arts. 52, 54 and 56 EPC owing to Claims 1-9 lacking novelty or inventive step.

## 1. Independent claim 1

In the following analysis, the features introduced by the words “in particular” (“insbesondere”) are not considered, because such features do not limit the scope of the claim according to the current EPC practice (see “Guidelines to Examination” Chapter III, Part C 4.6).

Claim 1 recites a pack of thin card or suchlike comprising a container, a lid, a collar, longitudinal edges and transverse edges; the longitudinal edges and/or the transverse edges are constructed by forming of the packing material as an outwards orientated protrusion, which is round in cross section, or as an inwards orientated recess which is also round in cross section.

ITBO01O000022 is an Italian design model, has been filed on 11.05.2001 and is opened to the public inspection from 11.05.2002 (12 months after the filing according to the Italian patent law). The patent application in object claims a priority of 05.11.2002 and thus ITBO01O000022 belongs to the state of the art for the patent application in object.

ITBO01O000022 shows 30 different cigarette packs; in particular figures 14, 15 and 20 show three cigarette packs of the hinged-lid type, which are made by thin card or suchlike as said in the disclosure: “I materiali impiegati, nonché le dimensioni ed i colori potranno essere qualsiasi, ad esempio carta, cartoncino, plastica e assimilabili, a seconda delle necessità” = “Can be used any material, dimension and color, for example paper, thin card, plastic or suchlike as requested”.

Each of the three cigarette packs of the hinged-lid type shown in figures 14, 15 and 20 of ITBO01O000022 has a container, a lid, a collar (the collar is not shown, but the presence of a collar is implicit due to the fact that in a hinged-lid cigarette pack of that type a collar is always present), longitudinal edges and transverse edges.

In the packs shown in figures 14 and 15 of ITBO01O000022, each of the four longitudinal edges is constructed by forming of the packing material as an outwards orientated protrusion, which is round in cross section.

In the pack shown in figure 20 of ITBO01O000022, each of the four longitudinal edges is constructed by forming of the packing material as an inwards orientated recess which is round in cross section.

Owing to the above, ITBO01O000022 discloses all the features recited by claim 1 and thus claim 1 is not new in view of ITBO01O000022.

DE4429670 discloses a folding box having a stiffening liner inside it, a bottom portion and an integrated folding lid. As clearly shown in figure 2, the two upper transverse edges are constructed by forming of the packing material as an inwards orientated recess which is also round in cross section.

US5255842 discloses a container having the four longitudinal edges constructed by forming of the packing material as an outwards orientated protrusion, which is round in cross section (figure 5).

DE1017013 discloses a container having edges constructed by forming of the packing material as an inwards orientated recess which is also round in cross section (figures 6 and 8).

GB819206 discloses a cardboard cigarette pack with an integral hinged box-like lid, which has the two longitudinal edges constructed by forming of the packing material as an outwards orientated protrusion, which is round in cross section (figures 1 and 2).

Each of the aforementioned documents DE4429670, US5255842, DE1017013 or GB819206 teaches to construct the edges of a pack by forming of the packing material as an outwards orientated protrusion, which is round in cross section or by forming of the packing material as an inwards orientated recess which is also round in cross section.

US4753383 discloses a cigarette pack of the hinged-lid type having rounded longitudinal edges. US4753383, DE4429670, US5255842, DE1017013 and GB819206 belong to the same technical field: packages for containing items, thus the skilled man is naturally invited in combining the teaching of such documents.

Accordingly, claim 1 is not inventive over the combination of US4753383 with DE4429670, US5255842, DE1017013 or GB819206.

## 2. Dependent claim 2

Claim 2 recites that the edges are constructed as a protrusion and have a part circle form cross section approximately in the form of a three quarter circle.

In the packs shown in figures 14 and 15 of ITBO01O000022, each of the four longitudinal edges is constructed as a protrusion and has a part circle form cross section approximately in the form of a three quarter circle.

Accordingly, claim 2 is not new in view of ITBO01O000022. Furthermore, claim 1 is not inventive over the combination of US4753383 with US5255842 or GB819206.

### 3. Dependent claim 3

Claim 3 recites that the edges are constructed as a recess and have a part circle form cross section approximately in the form of a quarter circle.

In the pack shown in figure 20 of ITBO01O000022, each of the four longitudinal edges is constructed as a recess and has a part circle form cross section approximately in the form of a quarter circle.

Accordingly, claim 3 in not new in view of ITBO01O000022. Furthermore, claim 1 is not inventive over the combination of US4753383 with DE4429670 or DE1017013.

### 4. Dependent claim 4

Claim 4 recites that all the four longitudinal edges are constructed by forming of the packing material as an outwards orientated protrusion, which is round in cross section, or as an inwards orientated recess which is also round in cross section.

In each of the packs shown in figures 14, 15 and 20 of ITBO01O000022, all the four longitudinal edges are constructed by forming of the packing material as an outwards orientated protrusion, which is round in cross section, or as an inwards orientated recess which is also round in cross section.

Accordingly, claim 4 in not new in view of ITBO01O000022. Furthermore, claim 1 is not inventive over the combination of US4753383 with DE4429670, US5255842, DE1017013 or GB819206.

### 5. Dependent claim 5

Claim 5 recites that some transverse edges are constructed by forming of the packing material as an outwards orientated protrusion, which is round in cross section, or as an inwards orientated recess which is also round in cross section.

US5833060 discloses a cigarette pack with rounded major transverse edges. Please note that both ITBO01O000022 and US5833060 relates to the same object: a rigid cigarette pack of the hinged-lid type, thus the skilled man does not have any difficulty in combining the teaching of the two documents.

DE4429670 discloses a folding box having a stiffening liner inside it, a bottom portion and an integrated folding lid. As clearly shown in figure 2, the two upper transverse edges are constructed by forming of the packing material as an inwards orientated recess which is also round in cross section.

Accordingly, claim 5 is not inventive over the combination of ITBO01O000022 with US5833060. Furthermore, claim 5 is not inventive over the combination of US5833060 with DE4429670.

## 6. Dependent claim 6

Claim 6 recites that the longitudinal edges of the collar have the same shape of the longitudinal edges of the pack.

As shown by US4753383 or by US4753384, it is normal that the the longitudinal edges of the collar have the same shape of the longitudinal edges of the pack. For example the abstract of US4753383 discloses "*An essentially cuboid hinge-lid pack with a pack part (10) and a hinge lid (11) is rounded in the region of vertical longitudinal edges (26,27) and lid longitudinal edges (28 and 29) and in the region of collar longitudinal front edges (30).*"

Please note that both ITBO01O000022 and US4753383 (or US4753384) relates to the same object: a rigid cigarette pack of the hinged-lid type, thus the skilled man does not have any difficulty in combining the teaching of the two documents.

Accordingly, claim 6 is not inventive over the combination of ITBO01O000022 with US4753383 (or US4753384). Furthermore, claim 1 is not inventive over the combination of US4753383 with DE4429670, US5255842, DE1017013 or GB819206.

## 7. Dependent claim 7

Claim 7 recites that the four major transverse edges are constructed by forming of the packing material as an outwards orientated protrusion or as an inwards orientated recess and that the top corner tabs and the bottom corner tabs has a reduced width so as each corner tab can be positioned between two major transverse edges.

US5833060 discloses a cigarette pack with rounded major transverse edge; furthermore, as clearly shown in figure 6, the top corner tabs (indicated with the reference number 47) and the bottom corner tabs (indicated with the reference number 48) have a reduced width so as each corner

tab can be positioned between two rounded major transverse edge. Please note that both ITBO01O000022 and US5833060 relates to the same object: a rigid cigarette pack of the hinged-lid type, thus the skilled man does not have any difficulty in combining the teaching of the two documents.

Accordingly, claim 7 is not inventive over the combination of ITBO01O000022 with US5833060.

## 8. Dependent claim 8

Claim 8 recites that protrusion or the recess has a radius comprised between 1.5 mm and 4 mm.

Owing to the fact that a standard cigarette pack of the hinged-lid type has a transverse dimension of about 55 mm, it is evident that the that protrusion or the recess of the packs shown in figures 14, 15 and 20 of ITBO01O000022 have a radius comprised between the claimed range. Furthermore, the application in object fails to indicate any technical problem solved by the claimed range, which is just a matter of design and could only have a connection with the aesthetic of the pack.

Accordingly, claim 8 is not new in view of ITBO01O000022 or at least is not inventive over ITBO01O000022. Furthermore, claim 1 is not inventive over the combination of US4753383 with DE4429670, US5255842, DE1017013 or GB819206.

## 9. Dependent claim 9

Claim 9 recites that the pack is made by a flat blank, in which the longitudinal edges and/or the transverse edges are made by deformation or by incision and have a substantially semicircular section; if the blank is folded to obtain protrusions, the final radius of each protrusion is smaller than the radius of the starting semicircular section and if the blank is folded to obtain recesses, the final radius of each recess is bigger than the radius of the starting semicircular section.

US2003047471 discloses a flat blank having longitudinal edges and/or transverse edges made by deformation or by incision and having a substantially semicircular section (see for reference figure 3); furthermore, when the blank is folded for obtaining the pack, the blank cannot be stretched/compressed so as to substantially increase/reduce its dimensions, thus the length of the arc of circumference of each longitudinal edges has to be substantially constant:

- when the blank is folded to obtain protrusions of 270° starting from an arc of about 180° and the length of the arc cannot be increased then the final radius of each protrusion is smaller than the radius of the starting semicircular section (it cannot be different);
- when the blank is folded to obtain recesses of 90° starting from an arc of about 180° and the length of the arc cannot be reduced then the final radius of each recess is bigger than the radius of the starting semicircular section (it cannot be different).

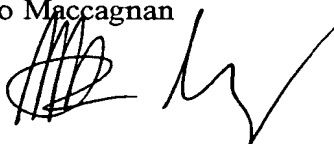
Please note that both ITBO01O000022 and US2003047471 relates to the same object: a rigid cigarette pack of the hinged-lid type, thus the skilled man does not have any difficulty in combining the teaching of the two documents.

DE1017013 discloses a container having edges constructed by forming of the packing material as an inwards orientated recess which is also round in cross section (figures 6 and 8). As shown in figures 5 and 7, the pack is made by a flat blank, in which the edges are made by deformation or by incision and have a substantially semicircular section.

Accordingly, claim 9 in not inventive over the combination of ITBO01O000022 with US2003047471. Furthermore, claim 1 is not inventive over the combination of US4753383 with DE1017013.

Yours faithfully,

Matteo Maccagnan



Please send your reply to: **Torta Research**

Via Emilia Ponente 34  
40133 Bologna (ITALY)  
Tel. +39 051 389122  
Fax +39 051 389030